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Authoritarian Liberalism: from Schmitt via Ordoliberalism to the Euro

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Abstract:	The contribution examines the market liberal veracity of Hayek's view that a dictatorship may be more liberal in its policies than an unlimited democratic assembly. Hayek's warning about the potentially illiberal character of democratic government is key to the German ordoliberal thinking that emerged in the context of the crisis of the Weimar Republic. The ordoliberal thinkers were keenly aware of Schmitt's political theology and argue with him that the state is the predominant power in the relationship between market and state, conceiving of this relationship as free economy and strong state. They argue that the establishment of social order is the precondition of free economy; law does not apply to disorder and does not create order. The liberal state is the 'concentrated force' of that order. The contribution argues that ordoliberalism is best characterized as an authoritarian liberalism and assesses its contemporary veracity in relation to European Union.

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Authoritarian Liberalism: From Schmitt via Ordoliberalism to the Euro

Werner Bonefeld

University of York, UK

Abstract

The contribution examines the market liberal veracity of Hayek's view that a dictatorship may be more liberal in its policies than an unlimited democratic assembly. Hayek's warning about the potentially illiberal character of democratic government is key to the German ordoliberal thinking that emerged in the context of the crisis of the Weimar Republic. The ordoliberal thinkers were keenly aware of Schmitt's political theology and argue with him that the state is the predominant power in the relationship between market and state, conceiving of this relationship as free economy and strong state. They argue that the establishment of social order is the precondition of free economy; law does not apply to disorder and does not create order. The liberal state is the 'concentrated force' of that order. The contribution argues that ordoliberalism is best characterized as an authoritarian liberalism and assesses its contemporary veracity in relation to European Union.

Keywords:

Schmitt, Hayek, authoritarian liberalism, ordoliberalism, dictatorship, democracy, European Union, political state

> The program of liberalism …summed up in a singly word, should read 'property', that is, private property in the means of production….All other demands of liberalism derive from this basic demand (Von Mises, 1985: 137).

> It cannot be denied that Fascism and similar movements aiming at the establishment of dictatorships are full of the best intentions and that their intervention has, for the moment, saved European civilization

> (Von Mises, 1985: 51).

Introduction: On Authoritarian Liberalism

The term 'authoritarian liberalism' was coined by the German Jurist Hermann Heller in a 1933 publication about the rightist von Papen government of 1932.[1] His account explored Carl Schmitt's 'Sound Economy and Strong State' (1998) as the theoretical manifestation of the authoritarian turn of liberal thought. Heller characterized the turn towards authoritarianism as a demotion of democratic government 'in favour of the dictatorial authority of the state' (Heller, 2015: 296).[2] Schmitt's stance was by and large shared by the founding thinkers of German ordoliberalism. They too identified the democratic character of the Weimar Republic as the root cause of the crisis of Weimar, arguing that mass democracy is tyrannical in its consequences.[3]

In the context of Weimar, the authoritarian reassertion of the state was thus not only meant to overcome the 'lamentable weakness' (Friedrich, 1955: 512) of the liberal state. It was also

meant to reorder the socio-economic relations to achieve free economy. Authoritarian liberalism conceives of the state as 'market police' (Rüstow, 1942). According to Heller (2015) it posits the state in its pure liberal form as the organized force and concentrated power of the system of liberty, enforcing market freedom and sustaining depoliticized socio-economic relations. Depoliticisation is an eminently political practice. To Schmitt and the ordoliberals 'the Leviathan was and had to be there first' (Streek, 2015: 363); and rightly so: by its own logic, and as Adam Smith had already argued, free economy descends into 'bloodshed and disorder' (Smith, 1976: 340) unless the state civilises its conduct by means of law, police, and fabrication of the moral sentiments of the system of private property. The freedom to compete presupposes 'market police with strong state authority' (Rüstow 1942: 289) to sustain it. The strength of the state as market police depends on its independence from society. Its capacity to neutralise democracy and civilise the conduct of a free labour economy depends on the state as the independent and concentrated power of society.[4]

Comment [WB1]: new footnote; in preparation for answer to reviewer I on the various forms of liberalism and the question about capital

In the late 1920s / early 1930s, the critique of mass democracy was part of the rightist reaction to the Weimar Republic. In the 1950s, it became part of the 'anti-totalitarian' idea that mass democracy leads to unfreedom, and that for the sake of an open society democracy needed to be fettered. As Willgerodt and Peacock (1989: 6) put it, 'those who rely on the rules for liberal decisions, irrespective of the results of these decisions, must answer the question: how can it be guaranteed that these decisions will not destroy the liberal rules'. In this perspective, freedom needs to be protected against the enemies of freedom even if they move formally within the legal bounds of a free society and secure parliamentary majorities by free elections. That is, 'trust in freedom must be accompanied by a distrust of forces that abolish freedom or interfere with it' (Lenel, 1989: 21). Surveillance is the condition of trust. Recognition of the enemies of freedom depends on the certainty of indivisible socio-economic values and political norms that recognize free economy as a 'universal form of

existence' (Eucken, 2004: 321).[5] There can be no doubt. Relativism has no values to defend. It succumbs, they say, to 'trouble makers' (Röpke, 2009: 50). In this remarkable manner, the rightist denunciation of Weimar democracy established itself as a militant defence of post-war democracy. 'Militant democracy' rejects liberality as an open invitation to the enemy within. Instead it demands the curtailment of democracy ostensibly in order to protect it against attack and communist overthrow.[6]

In the 1970s the authoritarian liberal critique of democracy came to the fore again in the context of the then economic crisis. The debate focused by and large on Britain. It argued that the crisis had been brought about by an excess of democracy that had let to an overloaded interventionist state, which had stifled the economy with crisis-ridden consequences. Its crisis-diagnosis entailed the prescription for resolving the crisis. The economy had to be set free by rolling back the state and by curtailing the democratic excess. Its stance formed the theoretical foundation of the incoming Thatcher government in the 1979.[7] However, in Europe, the most sustained effort in neutralising mass democracy occurred in the form of European monetary union, which created the world's only stateless currency. The government of the Euro is to all intents and purposes entirely removed from the territorially regimented democratic sovereigns. It sets in place a market liberal framework for the conduct of policy in the federated and democratically constituted member states.

The paper lays out the argument that capitalist political economy entails the liberal state as market police. This conception of the state excludes the idea of mass democracy as the constitutive basis of the liberal rule of law.[8] The next section introduces Schmitt's authoritarian stance and examines the ordoliberal critique of mass democracy. The following section presents the neoliberal account of a crisis of democracy in the 1970s.[9] The conclusion summarises the argument with reference to the elements of authoritarian liberalism in the

Comment [WB2]: new footnote

Comment [WB3]: new footnote; in response to reviewer I.

governance of the Euro. I hold that the European monetary union amounts to a system of imposed liberty, which strengthens the liberal character of the member states. It also tends to nationalise the critique of 'liberty' in the form of powerful neo-fascist political movements and parties, including populist nationalist rejection fed by impotent rage and pitiful delusions about 'land and sea', as in the case of Brexit.[10]

Comment [WB4]: addition; in response to reviewer II, re Brexit

Authoritarian Liberalism: On Schmitt and Ordoliberalism

Authoritarian Liberalism

Heller's appraisal of Schmitt's stance detected a 'state of exception,' in which government by authoritative decision-making replaces parliament as the key institution of the state. In his view, dictatorship was needed draw a line of separation between society and state. The independence of the state from society is fundamental to both, the ability of government to govern and to the 'initiative and free labour power of all economically active people' (Schotte, cited in Heller, 2015: 299). In this perspective the circumstance that 'nearly 90% of our people' who live off an income barely sufficient for the satisfaction of their needs, does not in any way call into question the liberal rule of law. It treats each individual equally whatever their concrete circumstances might be (Heller, 2015: 301). However, assertion of their democratic power imperils the liberal rule of law, as the state becomes the target of all manner of social demands for special interventions, making it responsible for society at large, from the cradle to the grave. For Schmitt and the ordoliberals, unlimited mass democracy tends towards the development of a state of pure quantity, which is the democratic welfare state of Weimar. The state of pure quantity is a totally weak state. It is unable to distinguish between the 'friends' of liberty and its 'enemies' (Schmitt, 1985; Müller-Armack, 1933: 31; Röpke, 1998: 66). The totally weak state is the totally responsible state. It is characterized by

political 'overload' and is unable to govern society on the basis of liberal principles.[11] It is a state without political quality because mass society governs through the state and asserts its demands for social equality and material security as a democratic equal.

Heller thus characterized authoritarian liberalism as an attempt at establishing what Schmitt called a state of total quality, that is, a state that takes on the task of liberating the economy, depoliticising the socio-economic relations, enabling free economy in the social structure and mentality of society, and finally of securing and sustaining the 'free labour power' of the ninety per cent who struggle to make a living. This state of total quality successfully claims the monopoly of violence by asserting itself as the concentrated force of a depoliticized exchange society in which the individuals compete and exchange with one another as owners of private property, the one buying labour power the other selling it in freedom from coercion and as equals in the eye of the law. Authoritarian liberalism recognises the liberal state as the concentrated power of a free labour economy. It understands that the political equality of a class of dependent sellers of labour power manifests a danger to capitalist wealth and it therefore demands a strong state that does not let itself become the target for welfare-seeking workers.[12] It recognises the political necessities of the law of private property and 'defends work as a duty, as the psychological happiness of the people' (von Papen, cited in Heller, 2015: 300). The strong state governs to secure and maintain the 'psycho-moral forces' at the disposal of a capitalist society, transforming rebellious proletarians into self-responsible and willing entrepreneurs of labour power (Röpke 1942: 68). Schmitt thus argues for the heroism of poverty and service, of sacrifice and discipline, by which the 'disciples' of a legally unregulated 'leader' commit themselves to the imagined national community (Schmitt, 1934). In this context, Streek's interpretation of Heller's account is both insightful and misleading. He argues that 'Heller understood that Schmitt's "authoritarian state" was in fact the liberal state in its pure form, weak in relation to the capitalist economy but strong in fending off

democratic interventions in its operation' (Streek, 2015: 361). I agree with the latter and disagree with the former. Streek (2015: 361) rightly argues that the 'depoliticized condition of a liberal economy is itself an outcome of politics'. It is, says Schmitt, 'a political act in a particularly intense way' (Schmitt, 1998: 227). In distinction to Streek, the liberal character of the state does not just rest on restraining democratic intervention into a free labour economy, protecting the relations of private property from market restricting demands for collective provision. It is therefore also defined by its role of 'market police', enabling and facilitating capitalist economy – capitalist social relations do not posit themselves as if by force of nature. They amount in fact to a political practice of economic order (Bonefeld, 2013). As Miksch (1947: 9, see also Böhm, 1937: 101) explains, economic freedom is not a manifestation of some natural propensity as in classical liberalism. Rather, 'the natural order has become a political event [Veranstaltung]'. That is, free economy amounts to a practice of government.

'Sound Economy and Strong State' (Schmitt, 1998)

Carl Schmitt perceived the crisis of the Weimar Republic as a crisis of political authority which had come about as a consequence of an unrestrained mass society in revolt. For him the democratic character of the Weimar Republic was at the centre of the crisis. As a consequence of the German revolution of 1918 mass democracy had supplanted the liberal state. The liberal state had literally lost its liberal parliamentary constituency. Prior to the incursion of mass society into the political system parliamentary representation was founded on a homogeneity between rulers and ruled. It had amounted to a democracy of friends, who might squabble about the best way forward but were united by their recognition of what Schmitt refers to as the 'stranger'. With the onset of mass democracy, the 'stranger' gained

entry into the political institutions, and particularly into the liberal parliamentary system, transforming it into a means of mass representation. Parliamentary democracy no longer concentrated the bourgeois interests.[13] Institutionally Weimar mass democracy focused the crisis of liberal political economy. Mass democracy exerted not only influence on the conduct of government. It also legislated, subjecting the rule of law to mass democratic demands, and held government accountable to 'mass emotion and mass passion', as Röpke saw it (1998, p, 152). Law-making by those who need to be governed amounts to 'nothing more then mob rule' (Schmitt, 2008a: 119). Law thus became ordinary law in the true meaning of the word, that is, it became the common law of a politicized and conflict ridden mass society. In Schmitt's analysis the legal framework of government started to splinter and fragment into a chaotic assembly of incoherent elements of law (Schmitt, 2008b). In his judgement, therefore, the Weimar Republic amounted to a totally weak state. Instead of a government of friends, it had accepted the enemy as an equal lawmaker, leading to the dissolution of the liberal rule of law as coherent framework of social order and sound economy.[14]

For Schmitt mass 'society' had taken hold of the state and dragged it down into society, making it a mass state. The outcome was a state without coherence and political quality. In his view, the social forces literally carved the state up amongst themselves, transforming it into a disjointed expression of all manner of distinct social interests, leading to the fragmentation of 'the political' and therewith the decomposition of the central institution that, for Schmitt, is able to sustain and maintain 'sound economy'. Mass democracy destroyed the independence of the state and reproduced the social conflicts and antagonisms within the very institution that was meant to contain them on the basis of order, law, and Right. As Rüstow put it, the (liberal) state was 'being pulled apart by greedy self-seekers. Each of them takes out a piece of the state's power for himself and exploits it for its own purposes…This phenomenon can best be described by a term used by Carl Schmitt –"pluralism". Indeed, it

represents a pluralism of the worst possible kind. The motto for this mentality seems to be the "role of the state as a suitable prey"' (Rüstow, 1963: 255). Like Rüstow, who argued for a commissarial dictatorship as the means of returning society back to order, ordering it, Schmitt demanded the restoration of the political, of the state, as an independent institution of authoritative decision-making. 'There can be no legal norm that is applicable to chaos. Order has to be established for the legal norms to be effective' (Schmitt, 1985: 13). Order is the condition of law. The rule of law cannot defend itself against a politicized mass society. Instead, it is 'devoured' by it. The rule of law does not 'know' whether it applies. The judgment as to whether it applies or whether its temporary suspension is required to sustain it in the long run once the declared emergency is over, is not a matter of legal judgment. The law does not suspend itself. It amounts rather to an authoritative judgement, a decision and declaration, about the prevailing situation by what Schmitt deems to be the real sovereign, that is, the dictator who defines and acts on the declared exception to the (liberal) rule of law and is revealed by it and in it.

The decision to govern by unbound authority abolishes the idea of democracy as the sovereignty of the people. In dictatorship, 'reality is not admit of knowledge, only of acknowledgment' (Fortstoff, 1933a: 25).[15] The validity of the sovereign act is not a matter of law or abstract notions of justice. Indeed, 'attempts to dispute the state's newly gained effective right signify sabotage…Relentlessly to exterminate this sort of thought is the noblest duty of the state today' (Forsthoff, 1993b: 29). The validity of the sovereign decision to suspend the rule of law resides in the authoritarian elimination of any doubt in the veracity of the decision. The state of emergency is a state of a particularly robust political quality. It is a moment of great political intensity and pure political quality. The decision to suspend the rule of law amounts to a decision to spill blood (Schmitt).

In sum, the strong state is an authoritarian executive state (Regierungsstaat). It curtails the legal state (Gesetzgebungsstaat) of popular sovereignty and governs with the identified stranger to the liberal homogeneity of interest in mind (Schmitt, 1931, 1932). For Schmitt, the struggle for and maintenance of the state of pure (liberal) quality presupposes the elimination of all forms of social conflict by means of a strong state stewardship of depoliticized socio-economic relations. The state, as it were, orders society to achieve the homogeneity of national purposes in the mentality of society at large. In sum, 'democracy requires...first homogeneity and second – if the need arises – elimination and eradication of heterogeneity…A democracy demonstrates its political power by knowing how to refuse or keep at bay something foreign and unequal that threatens its homogeneity' (Schmitt, 1988: 9). Rossiter's notion that there can be 'no democracy in abnormal times' (1948: 8) does therefore not go as far as Schmitt. He accepts with Schmitt that abnormal times may require a dictatorship that 'ends the crisis and restores normal times' by ordering society (Rossiter, 1948: 7). Yet, for Schmitt, there can also be no liberal-democracy in normal times. Government on the basis of the rule of law amounts to a political decision about the prevailing situation. Political sovereignty is a latent presence in normal times, too. In its dormant form it manifests itself as an ever vigilant security state that, as Heller (2015: 301) explains with reference to Schmitt (1998) employs all 'technological means, especially military technology', to assure itself about the rightful conduct of the citizens.

Ordoliberalism and the State of Democracy

Like Schmitt the ordoliberals are keenly aware of the dangers of freedom. 'The enemies', says Röpke (2009: 50) profit by it, too, and are in the name of freedom given every conceivable opportunity to put an end to liberal democracy'. Echoing Schmitt's warnings about a democracy that does not identify the 'enemy', Röpke (1942: 253) argues that

'everybody knows that democracy can really function properly only when there is a certain minimum of agreement about the essential problems of national life'. It only functions properly as a democracy of friends. Existential issues are at stake. Once mass interests take hold of democracy, '[it] necessarily falls victim either to anarchy or collectivism' (Röpke, 1942: 246). In either case, a politicized mass society entails 'loss of social integration', diminishes 'differentiation of social status', and leads to increasing 'standardisation and uniformity'. It destroys, he argues, 'the vertical coherence of society' (Röpke, 1942: 246), leading to the loss of 'vital satisfaction' (Röpke, 1942: 240) and acceptance of social position. Out of the midst of industrialisation and urbanisation arises thus the figure of the dissatisfied and restless proletarian that akin to Marx's figure of the gravedigger (Marx and Engels, 1998) emasculates the law of private property by dislocating 'the economic machinery of market adjustment through prices' (Röpke, 1942: 3). A weak state yields to proletarian demands, which impairs not only the economic process. It also enflames the 'menacing dissatisfaction of the workers' (Röpke, 1942: 3) further as the passions of the dispossessed are left to fester. 'The challenging problem of the proletariat', Röpke argues, is not an economic one but a human one. It is characterized by a lack of vitality and psychological happiness. According to Rüstow, the authentic desire of the unruly masses is not to destroy free economy or to assemble in protest on street corners in constant defiance to the given situation. Rather, says Rüstow (1959: 102), the authentic desire of the masses is to be led and governed by Man of honest convictions and noble intensions, if only they knew whom to follow. Rüstow thus conceived of democracy as a plebecitarian leadership democracy, in which the masses are led by an enchanting elite that governs with an ethics of responsibility and provides charismatic underpinning to a disenchanted world of economic value and domination by abstract rules and ordering regulations.[16]

Comment [WB5]: added: abstract / ordering

Eucken too conceived of democratisation as the 'chaotic force of the masses' (1932: 312) which he considered to be the root cause for the transformation of the liberal state into a mass democratic welfare state. Weak governments appeased social discontent by broadening their popular appeal, bending to so-called 'sectional interests' that demanded equal rights and material security. Instead of enabling free economy, intervention into the free play of market forces created economic dislocations, which necessitated further interventions, leading to spiral of self-perpetuating interventions. In this climate of market distorting interventionism, private interest groups came to the fore, lobbying for restraint on competition in order to secure rents for themselves. Böhm (1937: 122) rejects the economic vocabulary for such restraint on competition. Instead of speaking about 'cartels, market regulation or mutual support', he says that the market disabling power of the private interests amounts to 'sabotage or complot.' In sum, weakened by mass democracy the state also yielded to the demands of a plurality of powerful economic interest groups with the result that it lost 'its force and its authority'. Unable to maintain 'its independence' from the clamour of society, it began 'to succumb to the attacks of pressure groups…monopolies and later unionized workers' (Rüstow, 1942: 276). These developments lead to the establishment of the 'quantitatively total state' that is characterized by party politics, compromise, and log-rolling, etc. It institutionalizes the 'concession to vested interests' as a principle of government (Eucken, 1932: 318). To the ordoliberals, unrestrained democracy leads to planned chaos.

The ordoliberal analysis of the crisis of Weimar political economy does not engage in economic argument or analysis. It identifies the crisis as a crisis of ungovernability that was brought about by an excess of democracy, which removed 'the whip of competition' (cf. Eucken, 1932) from the social forces that used their freedom to 'devoure' the liberal state as the concentrated force of a free labour economy (Rüstow, 1963: 258). 'Totalitarian mass parties' were allowed to 'abuse the rules of liberal-parliamentarianism' (Rüstow, 1942: 277),

leading to the establishment of a 'totalitarian [welfare] state' (Röpke, 1942: 4) that replaced 'the democratic sovereign, the market' (Röpke, 1942: 254), by 'collectivist tyranny' (Röpke, 1942: 248). For the ordoliberals, tyranny is 'rooted in democracy that is unrestricted and not sufficiently balanced by liberalism' (Röpke, 1942, 248). Tyranny, Röpke says, 'has always governed with the masses…, against the elite that carries civilisation on' (Röpke, 1942: 248.). He therefore calls upon Men of good judgement to provide 'leadership…and exemplary defence of the society's guiding norms and value' (Röpke, 1998: 130).[17] For the ordoliberals, liberalism has to be a militant liberalism that governs with authority and purpose, force and power, courage and commitment to the values of private property, whatever it takes. 'Liberalism', says Rüstow, 'had not demanded weakness from the state, but only freedom for economic development under state protection'. Such protection 'demands a strong state' (Rüstow, 1963: 68). The strong state is a 'state where it belongs; over and above the economy, over and above the interested parties [Interessenten]' (Rüstow, 1963: 258). It is the independence of the state from the interested parties, from society and thus from the democratic sovereign, that makes it strong as a market enabling force.

Given the 'proletarianized' conditions of Weimar, the founding thinkers of social market economy favoured a commissarial dictatorship under von Papen to achieve what Hayek calls freedom from 'coercion and violence' (Hayek, 1972: 66). Commissarial dictatorship was to re-establish the independence of the state from mass society in order to liberate the economy from the clamour of the masses not only by means of 'violence' but also 'authority and leadership' (Rüstow, 1959: 100). In Röpke's view (1942: 256) democracy is the true character of dictatorship. 'When a democracy in time of need places a dictator at its head, it in no way surrenders itself: much more is it obeying the counsel of necessity and the precept of history. Apart from all else it is, in the case of democratic dictatorship, a matter of transmitting a mandate which is restored after the period of state emergency has passed, but

not a normal, permanent form of the direction of state and economic life'. Friedrich (1968: 547) captures the liberal purpose of 'military government' well. It 'is to protect the welfare of the governed' – it is 'inspired by humanitarian consideration' (Friedrich, 1968: 547).

Nevertheless, the curtailment of mass democracy by commissarial dictatorship raises the fundamental question of how to keep dictatorship liberal. How to make sure that dictatorship is exercised in the name of freedom – like the Pinochet dictatorship in Chile that Milton Friedman, Friedrich Hayek and Jean Kirkpatrick, amongst others, found so praiseworthy.[18] There is no certainty. Uncertainty calls for vigorous action to eliminate any doubt about the rightful designation and obliteration of the enemy. Notwithstanding the analytical distinction between the authoritarian identification of the enemy and the fascist pursuit of the enemy, there is no law that prevents the crossing of the Rubicon. As Rossiter (1948: 290) saw it, 'into whatever forbidden fields of freedom the necessities of crisis may force the leaders of a constitutional government to go, go they must or permit the destruction of the state and its freedoms'. Kirkpatrick (1979) recognized benevolence in the freedom to dictate, maim and kill.

Comment [WB6]: added 'dictate, maim'

Ungovernability and Democratic Overload

During the 1970s, neoliberal interpretation of the then crisis of capitalist accumulation focused either explicitly or implicitly on the crisis of state authority. Fundamentally, the crisis was seen as a crisis of governability, which ostensibly had come about as a consequence of democratic overload. Core to the notion of democratic overload was the understanding that society had become ungovernable. Confronted by unrestrained mass democratic demands for collective provision and protection from competition, government conceded ground and

pursued illiberal socio-economic policies, which in its effect led to and reinforced the economic crisis. The crisis of the 1970s was thus seen as a crisis brought about by a weak state that had caved in to the special interests and mass democratic demands for welfare and employment protection.

The argument about democratic overload and social disorder held that the political parties tried to outbid each other for greater shares on the 'electoral market'. This was seen to have led to the 'expansion of inflationary expectations' on the part of the electorate, which the democratic system encouraged. As Sam Brittan (1976) put it, 'excessive expectations are generated by the democratic aspects of the system' (97) and 'the temptation to encourage false expectations among the electorate becomes overwhelming to politicians' (105). The basis trouble, according to Brittan, was 'the lack of a budget constraint among voters' (104). The state lacked the strength to contain mass expectations within the limits of a free society. As a consequence government was said to have become 'a sort of unlimited-liability insurance company, in the business of insuring all persons at all time against every conceivable risk' (King, 1976: 12). The entrepreneur, this figure of the neoliberal vision of a society of self-responsible seekers of economic value, was thus denied by the institutionalisation of a dependency culture that, in the form of the welfare state, punished success and provided for the idle. Non-compliance with the rights of private property and rejection of traditional norms of behaviour was rife. As King (1976: 23) put it, 'the man dependent on his wife to drive him to work finds increasingly that she refuses to do so'. Regardless of what specific concerns King might have had, the general thrust of the approach was that the crisis of the 1970s was caused by the combined effect of politicized social relations, non-compliance with expected norms of behaviour, and an unrestraint democratic system that encouraged political parties to outbid each other with welfare state promises. The state, it seemed, had become the hostage of the Fourth estate or what Röpke

(1998, see also Ancill, 2012) calls proletarianized social structures. For the neoliberals, the 'economic consequences of democracy' (see Brittan, 1977) were formidable and fundamental to the understanding of the economic crisis, and its resolution.

Fundamental to the removal of mass influence on the state is the separation of economy and state into distinct forms of social organisation. The state is to have as little power as possible in the economy, and that is, the economy is envisaged as a state-less sphere in which self-responsible individuals make decisions by their own free will guided solely by the free price mechanism. The state-less character of the economy entails its depoliticisation as an apolitical exchange society in which the buyers of labour power and its sellers meet as equal subjects of law, each pursuing their own interests and ends by their own free will and in liberty from coercion. Müller-Armack (1981: 102) notion that the state 'has to be as strong as possible within its own sphere, but outside its own sphere, in the economic sphere, it has to have as little power as possible' declares in fact for the complete eradication of orderlessness from the economy by a state that successfully claims the monopoly of the political. It thus also declares for the politicisation of the state as the independent power of a free, and that is, depoliticized economy. The achievement of a 'state-less' economic sphere amounts fundamentally to a political task. It is instituted and enforced by the state, and it is also supervised by the state to secure and sustain the rule-based conduct of the free entrepreneurs of labour power.

The neoliberal account of the crisis of the 1970s makes clear that the liberal state is the political form of free economy. The depoliticisation of the economy, the curtailment of trade union power, the transformation of the welfare state into a workfare state, and the liberalisation of the economy, creating, maintaining and sustaining free economy, are all a matter of a practice of government. Competition does not create undistorted exchange relations in undivided markets. It leads to either cut-throat greed or monopoly pricing.

Competition is a category of social strife and disunity. Its sociability amounts to a political practice. The economy does not posit liberty nor does it liberate itself. By itself it descends into 'bloodshed and disorder'. The liberal notion of market regulation by the invisible hand manifests a political practice of undistorted and undivided market relations. Laissez-faire is thus 'a highly ambiguous and misleading description of the principles on which a liberal policy is based' (Hayek 1944: 84). It is not an 'answer to riots' (Willgerodt and Peacock 1989: 6). It is neither an answer 'to the hungry hordes of vested interests' (Röpke 2009: 181) nor to politicized socio-economic relations, nor to mass democratic demands for conditions, nor to a democracy that does not know how to limit itself to the pursuit of liberty (see Crozier, etal, 1975). Indeed, for the sake of freedom 'the most fundamental principles of a free society…may have to be temporarily sacrificed…[to preserve] liberty in the long run' (Hayek 1960: 217). Writing in the 1970s, Hayek's warnings about unlimited democracy as a manifest danger to liberty moved, as it were, from the textbook about the constitution of liberty to the barracks. As he put in in praise of the Pinochet dictatorship, 'there might even exist today well-meaning dictators brought to power by a real breakdown of democracy and genuinely anxious to restore it if they merely know how to guard it against the forces that have destroyed it'. Indeed, according to Hayek, 'a dictatorship may impose limits on itself, and a dictatorship that imposes such limits may be more liberal in its policies than a democratic assembly that knows of no such limits' (Hayek, citied in Cristi, 1998: 168, fn. 16). Hayek identified the Pinochet dictatorship as a strong state, one that resolves the excess of democracy, draws a line between society and state, and makes the state governable as a 'planner for competition' (Hayek, 1944: 31).

Conclusion

For authoritarian liberalism, the state is the predominant category of political economy. It recognizes that free economy is premised on a definite social order and amounts to a comprehensive practice of government. Order is not an economic product. It is a political category. Economic crises manifest therefore a 'crisis of interventionism' (Röpke, 1936: 160). I have argued that authoritarian liberalism amounts to a statement about free economy as a political practice of the strong state. For the sake of economic liberty, it recognizes that the liberal state cannot have enough power and rejects the democratic organisation of that power. Authoritarian liberalism expresses the political necessities of free economy in the form of a political theological – it asks what is necessary to sustain the freedom of the dispossessed. The authoritarian state of free economy is armed.

The view that the economic crisis of the 1970s amounted to a crisis of state authority was based on the conviction that the 'mob' had made the state its prey, emasculating its liberal utility. Similar views had been aired in the late 1920s / early 1930s. Bernard Baruch, a leading Democrat, had protested against Roosevelt's decision to abandon the gold standard in 1933 by stating that 'it can't be defended except as mob rule. Maybe the country does not know it yet, but I think that we've been in a revolution more drastic then the French revolution. The crowd has seized the seat of government and is trying to seize the wealth. Respect for law and order has gone' (quoted in Schlesinger, 1958: 202). For Baruch, correctly, the dispossessed traders in labour power are the social majority. For the sake of freedom, their curtailment is of vital importance. It is vital also to remove democratic influence on policy-making especially monetary policy and credit policy. Neither should 'be operated like a switchboard by a government directly dependent upon a parliamentary majority or, worse still, upon some non-parliamentary group posing as the representative of public opinion' (Röpke, 1998: 223). The gold standard operated akin to a denationalized, de-democratized and entirely depoliticized framework for economic adjustments in

territorialized labour markets, each competing with the other on the basis of world market price. It posited government by nobody made everybody an accessory of the rule of seemingly independent economic forces.[19] Its abandonment made monetary policy subject to democratic pressures, which in Baruch's view is tantamount to the seizure of the state by the mob. That is, it allowed for the establishment of New Deal Keynesianism under Roosevelt. In this context, the ordoliberals argued that the pursuit of free economy presupposes the curtailment of mass democracy and the freedom of executive decision-making. In distinction to fascist currents, it would be wrong to identify their stance as an argument for dictatorship. It is rather was an argument about the means of sustaining economic liberty.

Comment [WB7]: omitted 'ultimate'

The state of exception manifests a failure of government to prevent the manifestation of liberal emergency. That is, the pursuit of liberty has to be pre-emptive to avoid disorder to occur in the first place. Röpke (1969: 97) therefore argues that democracy must be 'hedged in by such limitations and safeguards as will prevent liberalisms being devoured by democracy'. Tying democracy to a liberal foundation moved centre ground in the post-war period. These attempts included the granting to Constitutional Courts extra-ordinary powers of adjudicating on the legitimacy of parliamentary law, subordinating parliamentary law making to judicial review, oversight, and judicial power of declaring majoritarian law invalid. There was also, for example, sustained discussion about unanimity rules for law making (Buchanan/Tullock, 1962; Brennan/Buchanan, 1980; Buchanan/Wagner, 1977) and more recently there has been the introduction of debt ceilings as a constitutional constraint of parliamentary power.[20] Since the early 1980s, institutional attempts abounded at removing democratic oversight over significant elements of political decision-making to rule-based, extra democratic technocratic institutions like, for example, central banks that have been provided with greater independent powers of policy making (Bonefeld/Burnham, 1998).[21] In the European context, Hayek's (1939) vision of a system of 'interstate federalism' turned to be most suggestive for the

establishment of a European economic constitution in which federated states operate within a supranational framework of individual economic rights, laws and regulations that trump national democratic decision making and incorporate disempowered mass democratic parliamentary assemblies as legitimatising chambers of effectively de-democratized law making by a Council of national executives (Streek, 2015; Wilkinson, 2015; also Bonefeld, 2015).

The 'pact for Europe' is a pact without demos. It is also a pact without a political sovereign. Political sovereignty remains federated into territorialized political entities, each enjoying the status of democratically constituted monopoly holders of the legitimate use of violence, implementing the rules decided upon by European level institutions. During the Euro-crisis the European Council of the Heads of the Eurozone governments emerged as the key decision-making body. Unregulated by law and aloof from territorialized democratic constituencies, it managed the crisis by authoritative decision-making. Habermas' (2012) identification of the new 'Europe' as a state of exception brings this assertion of executive managerialism into sharp focus. It characterizes the coming to power of an 'unbound' executive. Contrary to a whole history of liberal democracy, law is made by executive decision, from fiscal retrenchment to loss of fiscal sovereignty. In the case of Greece, the Council decided that Greece had to restructure the entirety of its social contract as a condition of punitive bail out agreement. In effect the Greek state transformed into an executive state of Council decisions.

In the Eurozone, the authoritarian notion that a properly governed 'commonwealth' has to limit the democratic excesses of mass society manifests itself through a federated system, which comprises a supranational economic constitution, executive law making and implementation of the rules agreed upon by the democratically constituted member states. It removes democratic influence on the conduct of monetary policy, fetters fiscal policy to the

pursuit of sound money, enables the freedom of competition between territorialized labour market, and brings the democratically constituted member states under a regime of imposed liberty. As Streek put it, '[w]here there are still democratic institutions in Europe, there is no economic governance any more, lest the management of the economy is invaded by market-correcting non-capitalist interests. And where there *is* economic governance, democracy is elsewhere' (2015: 366). Euro government thus strengthens the liberal foundation of the democratic member states and in this manner reasserted the 'independence of [their] will' over the territorialized citizenries.[22]

The European system of liberal democracy not only stimulates competition between territorialized labour markets. It also tends to nationalize the protest against the supranational regime of imposed liberty. The proliferation of the extreme right, including the neo-fascists, from the National Front in France to Golden Dawn in Greece, has become the new normal in Euro-land. In the context of the Euro-crisis, the curtailment of traditional forms of parliamentary democracy suffocated not only traditional forms of political contestation and legitimation, which re-established the (anti-European) nationalist right as a force to be reckoned with. It also disarmed a whole tradition of left internationalism in Europe and reinforced earlier ideas about the nation as a force against globalization.[23] Brexit articulates the idea of national self-determination as a perverted alternative to the European system of liberty by executive government. Rather than overcoming the tradition of authoritarian liberalism it posits it at its most dangerous, as a movement of national purposes.

Comment [WB8]: added

Comment [WB9]: addition, in response to reviewer II

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For correspondence:

Werner Bonefeld, Department of Politics, University of York, Derwent College, York, YO10 5DD, UK

Email: werner.bonefeld@york.ac.uk

Endnotes

[1] Franz von Papen was a German nobleman, officer and politician. After serving as Chancellor in 1932, he persuaded the president Paul von Hindenburg to appoint Adolf Hitler as Chancellor in 1933. Von Papen served as Hitler's vice-chancellor from 1933 to 1934. The von Papen Chancellorship was known as the 'cabinet of barons'.

[2] See also Marcuse (1988). At that time, Schmitt was a supporter of von Papen's 'authoritarian state' (Heller, 2015: 295) as were the founding thinkers of German ordoliberalism, including Euken, Röpke and Rüstow (see Haselbach, 1991). The term ordoliberalism emerged in the 1950s. In the late 1920s the ordoliberals saw themselves as proponents of a 'new liberalism' beyond laissez-faire. In 1938, at the Walter Lippman Colloquium, Rüstow introduced the term 'neo-liberalism' to distinguish this new,

state-centric liberalism from the laissez-faire tradition, which he rejected as a theology. On the trajectory of neoliberalism, see the contributions to Mirowski and Plehwe (2009).

[3] Schmitt's was a regular point of reference for the ordoliberal critics of Weimar democracy. See amongst others Haselbach (1991), Cristi (1998), Tribe (1995), and Streek (2015). See also Bonefeld (2012). Hayek (1944) rightly denounces Schmitt as the legal philosopher of German Nazism only to endorse his critique of Weimar democracy as the 'most learned and perceptive' (Hayek, 1960: 485). On this see also Bonefeld (2006a).

[4] The state, says Marx, is the political form of society 'viewed in relation to itself (1973: 108). As the 'organized force of society' (Marx, 1990: 915), it concentrates the political character of bourgeois society and in this manner depoliticises the exchange relations between the buyers of labour power and the producers of surplus value on the basis of law and order.

[5] Translations from German sources are the author's.

[6] On militant democracy, anti-communism, Fifth Columns and subversives under the matrass see Agnoli (1990) and Müller (2012). See also Bonefeld (1992). McCarthyism cuts from the same cloth.

[7] On Thatcherism as a project of free economy and strong state, see Gamble (1988) and Bonefeld (1993).

[8] This insight is not original. It is central to, amongst others, Tocqueville's warning about the threat posed by mass democracy to the liberal rule of law (Agnoli, 2000). See also Luxemburg's argument that in capitalist society 'the representative institutions, democratic in form, are in content the instrument of the interests of the ruling class. This manifests itself in a tangible fashion in the fact that as soon as democracy shows the tendency to negate its class character and become transformed into an instrument of the real interests of the population, the democratic forms are sacrificed by the bourgeoisie and by its state representatives' (1989: 47).

[9] The distinctions between ordoliberalism, neoliberalism, and authoritarian liberalism are fluid. Foucault (2008) is right to consider ordoliberalism as the original formulation of neoliberalism. It first the first robust market liberal response to the collectivist challenge. It asked what needs to be done to secure and sustain the order market liberty. What is necessary? In reality there exists only a difference in emphasise and also a division of academic labour. For a critical theory of the capitalist state as fundamentally a (market) liberal state, see Bonefeld (2014, chapt. 8).

[10] Land and Sea is a reference to world history as a struggle between land-based powers and sea-based powers. See Schmitt (2015). For the English nationalist elite, the delusion of a long lost British Empire as a sea-based common wealth for private enrichment lingers on and informs its demagogy for British freedom. Impotent rage characterizes the anti-EU revolt by the impoverished. They had nothing to lose and gained the promise of further hardship.

[11] This characterisation – overload and ungovernability – belongs to the neoliberal critique of the Keynesian welfare state in the 1970s.

[12] I use the phrase 'dependent sellers of labour power' as shorthand. For the free labourers access to the means of subsistence depends on the sale of their labour power.

[13] See also Weber (1994) for an account of this transformation and its consequences for government, including the party system, the ethics and legitimation of government, the logic of parliament representation and the conduct of administration.

[14] Schmitt's critique was directed against Kelsen's legal theory, which posited that laws made by parliamentary majorities according to established constitutional procedures, were legal and legitimate whatever the specific content of the law and its normative values. Schmitt rejected this stance as pure relativism and argued that the legitimacy of ordinary law is not a matter of law but, rather, of definite extra-legal value decisions and that the true sovereign is therefore not the rule of law. Rather, the true sovereign is the embodiment of legitimate Right (Recht). Hayek's later work on legal philosophy is

characterised by the distinction that Schmitt makes between the liberal rule of law and the democratic rule of law, arguing that the one enables liberty and the other tyranny. See Hayek (1979).

[15] Ernst Forstoff was a student of Schmitt's. He held various Professorship during Nazism. After the liberation from Nazism, he was dismissed from his teaching post by order of the American military government. He resumed teaching at Heidelberg University in 1952. Forsthoff was the leading author of the Constitution of Cyprus and was President of the Supreme Constitutional Court of Cyprus from 1960 to 1963.

[16] The phrase plebecitarian leadership democracy is Weber's (1994). He conceived of it as a means of retaining liberty in mass-democracy.

[17] The ordoliberal notion of that the revolt of the masses has to be countered by the revolt of the elite does not contradict liberal principles. It fights for them.

[18] In the words of Kirkpatrick (1979): Dictators like Pinochet are benevolent. They 'do not disturb the habitual rhythms of work and leisure, habitual places of residence, habitual patterns of family and personal relations. Because the miseries of traditional life are familiar, they are bearable to ordinary people who, growing up in the society, learn to cope'.

[19] This point derives from Hanna Arendt's critique of totalitarianism.

[20] On these issues, see Biebricher's (2015) insightful account. See also Radice (2014) on the determination of debt ceilings as an eminently political decision.

[21] Burnham (2001) has analysed these developments to amount to a depoliticisation of policy making. Depoliticisation of policy making is an eminently political act.

[22] The quotation is from Eucken (1932: 308).

[23] Indeed, during the 2000s state-centric critiques of globalisation helped to revive nationalist perspectives as allegedly progressive in character. See Bonefeld (2006b).